

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL NO. 1456  
LITIGATION )  
\_\_\_\_\_  
 ) CIVIL ACTION: 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: ) Judge Patti B. Saris  
ALL CLASS ACTIONS )  
\_\_\_\_\_  
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**PLAINTIFFS' ASSENTED-TO MOTION TO WITHDRAW WITHOUT PREJUDICE  
PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF ERIK Q. SCHULTZ  
AND FOR ORDER ASSESSING FEES AND COSTS**

Plaintiffs respectfully request that this Court allow Plaintiffs to withdraw Plaintiffs' Motion to Compel the Deposition of Erik Q. Schultz and For Order Assessing Fees and Costs scheduled for oral argument before Magistrate Judge Bowler on Monday, September 19, 2005.

Plaintiffs seek to withdraw their Motion without prejudice at this time because Mr. Schultz appeared for his deposition on Tuesday, September 13, 2005 in Phoenix, Arizona. During the course of the deposition, Mr. Schultz disclosed that he is currently employed by McKesson Corporation, but that McKesson was not aware he was giving testimony in this matter. Because McKesson would likely be a subject matter of testimony during the deposition, Plaintiffs' lawyer Elizabeth A. Fegan immediately stopped the deposition and contacted McKesson's counsel. Pursuant to agreement of all counsel present and McKesson's counsel, the deposition was suspended temporarily to allow attorneys for McKesson Corporation to prepare, attend and participate in light of Mr. Schultz's current employment with McKesson.

McKesson's attorneys have agreed to arrange for a mutually convenient date for the continuation of the deposition and to secure Mr. Schultz's attendance. As a result of Mr.

Schultz's appearance and the agreement to continue the deposition, plaintiffs suggest that this matter may be removed from the Court's hearing calendar.

Dated: September 16, 2005

Respectfully submitted,

By /s/ Steve W. Berman

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**CERTIFICATE OF SERVICE**

Docket No. MDL 1456

I, Elizabeth A. Fegan, hereby certify that I am one of plaintiffs' attorneys and that on September 16, 2005, I caused copies of Plaintiffs' Assented-To Motion To Withdraw Motion To Compel Deposition of Erik Q. Schultz and For Order Assessing Fees and Costs to be served via facsimile on the following counsel:

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and on all other counsel of record via Verilaw on September 17, 2005 or the first date on which Verilaw had transitioned to Lexis/Nexis File & Serve and was again functional.

/s/ Elizabeth A. Fegan

Dated: September 16, 2005